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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,566	07/17/2000	Samuel P. Sawan	SUR-004DVCN	8355
7278	7590	02/28/2005	EXAMINER	
DARBY & DARBY P.C.			LEVY, NEIL S	
P. O. BOX 5257			ART UNIT	
NEW YORK, NY 10150-5257			PAPER NUMBER	

1616

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/617,566

Applicant(s)

SAWAN ET AL.

Examiner

Neil Levy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-33, 35-38 and 50-55 is/are pending in the application.
- 4a) Of the above claim(s) 37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-32, 35 and 50-55 is/are rejected.
- 7) ☒ Claim(s) 33 and 36 is/are objected to.
- 8) ☒ Claim(s) 25-33, 35-38 and 50-55 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The text of those sections of Title 35, U.S. code not included in this action can be found in a prior Office action.

Claims 37, 38 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on #6.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 31 depends on itself.

Claims 25-32, 50-55 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5849311. Although the conflicting claims are not identical, they are not patentably distinct from each other because the rejection of record is maintained.

Claims 25-27, 31, 32, 35, 50-55 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Eastwood, WO92/01380.

The instant composition of N containing polycationic polymer matrix with an incorporated non-eluting antimicrobial metallic material, adherent to an article, is seen since Eastwood provides such compositions, as coatings, on articles. Wood or leather articles are specifically identified(p.16, bottom). The composition are of benzalkonium groups, biguanide and quaternary ammonium, as cationic disrupters of microorganism membranes (1.6, paragraph 2, thru p.8).

Art Unit: 1616

Polymeric biguamides are identified at the top of p.8. The metal material is incorporated as Zinc complex, or copper, of Eastwood formula components (p.4, 5).

There is no evident statement of crosslinking, eluting, or non-eluting, but the preparations as coated onto wood or leather articles as paints, varnishes, lacquer (p.16, bottom) are instantly envisioned as crosslinked, when cured. Alternatively it would be obvious that the coating of wood or leather with the Eastwood compositions would result in crosslinked, or cured, antimicrobially protected articles, since the polycationic polymers are those of the instant and include the same functional groupings, binding with the East formula

I compounds would occur. These include the instantly claimed carboxylic acid (p.4) and isocyanate groups (p.5) of these compounds.

Applicant's arguments with respect to claims 25-33, 35-38, 50-55 have been considered but are moot in view of the new ground(s) of rejection.

We are in accord with applicant's arguments, upon reconsideration of Fox and Zeneka, that the instant invention is not arrived at through these patents, the rejection is withdrawn.

However, we still find the invention as claimed at least obvious, but a combination of the subject matter of claims 25 with claims 31+33, would overcome the references of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-

Art Unit: 1616

272-0619. The examiner can normally be reached on Tuesday through Friday from 7:00a.m to 5:30p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/tgd

February 25, 2005



NEIL S. LEVY  
PRIMARY EXAMINER